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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,321	08/03/2006	Alain Joseph Jean Garnier	PRD2188USPCT	7212
27777 PHILIP S. JOH	7590 07/22/201 NSON	EXAMINER		
JOHNSON & J		SULLIVAN, DANIELLE D		
	N & JOHNSON PLAZ VICK, NJ 08933-7003		ART UNIT	PAPER NUMBER
			1616	
			NOTIFICATION DATE	DELIVERY MODE
			07/22/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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jnjuspatent@corus.jnj.com lhowd@its.jnj.com gsanche@its.jnj.com

Office Action Summary Examiner Art Unit DANIELLE SULLIVAN 1616		Application No.	Applicant(s)				
DANIELLE SULLIVAN The MAILING DATE of this communication appears on the cover sheet with the correspondence address -	Office Action Comments	10/588,321	GARNIER, ALAIN JOSEPH JEAN				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address − Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Letarolise of the many to available subtre the processor of 3°C RT 11801, into event, however, may a rough be simply fitted. If INO pand for regly is specified above, the maximum statutory period will apply and will implicate ST, 100 pand for regly in specifical above, the maximum statutory predict will apply and will supply and will be state. Consciously will be state, contended period for regly in specified above, the maximum statutory provided will reply and will reply fitted. If INO pand for regly is pecified above, the maximum statutory period will apply and will supply and will specified by the will be state. Consciously a state of this communication. Fallow to recover a state of the communication of the maximum state will supply and will be state. Consciously a state of this communication. Fallow to recover a state of the communication of the maximum state will supply and will be communication. Fallow to recover a state of the communication of the maximum state will apply and the state of the communication. Fallow to recover a state of the communication of the state of the communication. This action is FINAL. 20 This action is non-final. 3 Since this application is to condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4 Claim(s) 1-1-1 is/are pending in the application. 4 Claim(s) 1-1-1 is/are allowed. 6 Claim(s) 1-1-1 is/are allowed. 7 Claim(s) 1-1-1 is/are allowed. 8 Claim(s) 1-1-1 is/are allowed.	Oπice Action Summary	Examiner	Art Unit				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extraolegical of times by the resultable under the processor all 5°C °R* 1.30(a). In ore worth thorsewith, may a may be a mainly filled - Extraolegical of times by the resultable under the processor all 5°C °R* 1.30(a). In ore worth, thorsewith, may a may be a manly filled - Extraolegical of times be received by the precision address of the communication, may be a many filled. - Fallow to rudy within the sent or extraolegic premior to rugh will. by abutine, causes the application to become MARINDORED (36 U.S. C. § 133). - Fallow to rudy will the sent or extraolegical premior for a manufacture of this communication. - Fallow to rudy will the sent or extraolegical premior the mailing date of this communication. - Fallow to rudy will the sent or extraolegical premior the mailing date of this communication. - Fallow to rudy will the sent or extraolegical premior the mailing date of this communication. - Fallow to rudy will the sent or extraolegical premior the mailing date of this communication. - Fallow to rudy will the sent or extraolegical premior to sent or the manufacture. - Fallow to rudy will the sent or extraolegical premior to sent or the manufacture. - Fallow to rudy will the sent or extraolegical premior to sent or the manufacture. - Fallow to rudy will the sent or the manufacture. - Fallow to rudy will the sent or the sent or the rudy rudy for the sent or the manufacture. - Fallow to rudy for the sent or the sent or the sent or the rudy rudy for the sent or the sen		DANIELLE SULLIVAN	1616				
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1) Responsive to communication(s) filed on 23 April 2010. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-14 is/are pending in the application. 4a) Of the above claim(s) 3-8,11 and 12 is/are withdrawn from consideration. 5) Claim(s)	 WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any 						
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DETAILED ACTION

Status of Claims

Claims 1, 2, 9, 10, 13 and 14 are pending examination.

Withdrawn rejections

Applicant's amendments and arguments filed 4/23/2010 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below are herein withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 9, 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antoni-Zimmermann et al. (US 2003/0199490).

Applicant's Invention

Applicant claims a composition comprising DDAC (didecyl dimethyl ammonium chloride) and imazalil in a carrier wherein the ratio of DDAC to imazalil is 1:100 to 10:1.

Claim 10 specifies the amount of DDAC is in a range from 10 to 1 mg/l and the range of

imazalil is in a range from 10 to 1 mg/l. Applicant claims a process of preparing the composition by mixing the ingredients with the carrier.

Determination of the scope and the content of the prior art (MPEP 2141.01)

Antoni-Zimmermann et al. teach synergistic biocidal compositions comprising 2-alkyl isothiazoline-3-one and pyrithione as a biocidal active ingredient. The active ingredients behave synergistically and are ideally suitable for controlling bacteria, fungus and algae (abstract). Additionally, the biocide composition may comprise one or more other biocidal active ingredients selected as a function of the specific system to be preserved selected from imazalil and didecyldimethylammonium chloride [0054, 0055 and 0075]. The concentration of pyrithione and 2-alkyl isothiazoline-3-one ranges from 0.1 to 99% based on the entire weight of the composition [0044]. The weight ratio of pyrithione to 2-alkyl isothiazoline-3-one is from 1:1000 to 1000:1 [0046]. The total concentration of the biocide in the system which is susceptible to microbial attack to be preserved range from 0.01 to 10% of the biocide composition [0096].

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Antoni-Zimmermann et al. do not exemplify a particular composition comprising imazalil and DDAC. However, the combination of one or more other biocidal active ingredients selected from imazalil and DDAC are taught as additional biocidal active ingredients. Since the claim uses "comprising" language, the inclusion of other ingredients is allowed. Antoni-Zimmermann et al. do not teach that the specific ratio of

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DDAC to imazalil is 1:100 to 10:1 or that the amount of DDAC is in a range from 10 to 1 mg/l and the range of imazalil is in a range from 10 to 1 mg/l. However, Antoni-Zimmermann et al. teach adjusting the ratios of the different biocidal active ingredients in the range of 1:1000 to 1000:1, hence it would have been routine optimization to optimize the concentration of the active ingredients by adjusting the ratio of imazalil to DDAC from 1:100 to 10:1. Furthermore, in view of In re Aller, Lacey, and Hall, 105 USPQ 233 (C.C.P.A. 1955), "change in concentration is not patentable modification, however, such changes may impart patentability to process if ranges claimed produce new and unexpected results". Since Antoni-Zimmerman et al. disclose the invention as being used to prevent fungal attack and only lack in specifying the amounts obtained present claims are prima facie obvious.

Finding of prima facie obviousness Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Antoni-Zimmermann et al. and use a composition comprising imazalil and DDAC. One would have been motivated to combine imazalil and DDAC because Antoni-Zimmermann et al. teach the combination of one or more other biocidal active ingredients selected from imazalil and DDAC. One would have been motivated to manipulate ranges during routine experimentation to discover the optimum or workable range since the prior art provides the general range. Therefore,

one would have been motivated to use the appropriate amount of imazalil and DDAC to achieve the specific ratio of DDAC to imazalil, 1:100 to 10:1.

Response to Arguments

Applicant's arguments filed 4/23/2010 have been fully considered but they are not persuasive.

Applicants first argue that Antoni-Zimmermann teaches imazalil and DDAC among many compounds listed, however nowhere is there a specific "singling out of imazalil and DDAC, let alone the combination specified. The Examiner is not persuaded by this argument because in view of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (2007), a claimed combination may be obvious to try where there are a finite number of predictable solutions, a person of ordinary skill would have reason to pursue options within his or her technical grasp and it is the product of ordinary skill or common sense. The issue is not whether the two compounds are singled out, rather the issue is if the combination would have been obvious to try. The Examiner believes selecting imazalil and DDAC would have been obvious to one of ordinary skill when selecting biocidally active ingredients.

Applicants finally argue that there is no data or examples in Antoni-Zimmermann that a combination of DDAC and imazalil has a synergistic effect and that the lack of data and examples cannot make the present invention obvious. The Examiner agrees that Antoni-Zimmermann fails to show data and examples of the combination of DDAC and imazalil, however the issue is whether one of ordinary skill in the art would have been motivated to combine the two compounds. Since it is obvious to combine two

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compounds which are biocidally active to form a third composition that is to be used for the very same purpose in view of <u>In re Kerkhoven</u> 205 USPQ 1069, (C.C.P.A. 1980). However, demonstrating unexpected results in necessary in order to establish patentability.

Comparative Data

The specification provides unexpected results for DDAC in combination with imazalil at the following ratios, 2:1, 1:5 and 1:50, however the claims recite the range of 1:100 to 10:1. Therefore, the showing in not commensurate in scope with the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan Patent Examiner Art Unit 1616

/Johann R. Richter/ Supervisory Patent Examiner, Art Unit 1616